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NOTE TO: Morning Meeting Participants

Here is a transcript of the speech Admiral Turner gave before the American College of Trial Lawyers last week in Boca Raton. Since he addresses a number of new issues I thought it would be of interest to you.

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Herbert E. Hetu

Attachment: a/s

Address by Admiral Stansfield Turner
Director of Central Intelligence
American College of Trial Lawyers
Boca Raton, Florida
Monday, 12 March 1979

STATE OF INTELLIGENCE

Three months before the attack on Pearl Harbor I went to Amherst, a small liberal arts college in New England, with the vague intent in mind that the following summer I would become an office boy in some large Chicago law firm and decide if I really did want to go on to a career in the legal profession. The war and a career in the Navy intervened and I thought I was never going to get my law education until President Carter appointed me Director of Central Intelligence.

That may sound strange to you but almost every day I get a tutorial on the law from my General Counsel, who tells me what I can and cannot do. In fact, there is a great deal stirring between the law and intelligence today. The greater degree of control by law than ever before is a part of the many changes that are taking place in our nation's intelligence activities. I think it is the one feature perhaps which would interest you most, but first I would like to sculpt for you the general nature of the fundamental and far-reaching changes that are taking place in the intelligence process as a whole. They derive from three basic factors. First, the changing perception the United States has of its own role in international affairs. Second, the great technical sophistication which has come to characterize the process of collecting intelligence information. And third, the much greater interest and concern about intelligence activities of the public in general.

Let me start with the changing perception of our role in the world. I believe that the United States is in a state of transition in its public attitudes towards foreign affairs from an activist, interventionist outlook to one where the restraints or limits on our ability to influence events in other countries is more widely recognized. This is not to say that we are retrenching into an isolationism. In fact, as a nation, I believe we are gradually emerging from our post-Vietnam, total aversion to any semblance of intervention on the international scene. Clearly, we must continue to play a major role on the world scene. Yet, the circumstances today are such that we must gauge much more carefully than ever before when intervention may be desirable or feasible.

Look, for instance, at the difficulty that we have today simply deciding whom we are for and whom we are against. Traditionally we often favored those people whom the Russians were against. But look at some of the choices we had in 1978. About this time last year, there was a war in Ethiopia. The Russians were against Somalia. Somalia was headed by a Marxist dictator who was the aggressor; a difficult side for us to be for. At the end of 1978 there was a war in Cambodia. The Russians were for the Vietnamese who were attacking Cambodia. Cambodia was headed by Pol Pot, perhaps the most repressive regime on the face of the globe since Hitler; again, a difficult choice for us.

In short, Communism today is not monolithic and it is hard for us to tell the black hats from the white hats. In addition, it is not nearly so clear today that the consequences of a nation succumbing to Communist influence are as irreversible as we often thought in the past. We have seen Indonesia, Sudan, Egypt, and even Somalia subjected to considerable Soviet influence and then return to independence. So today there is a legitimate question in our body politic as to whether it is always necessary to come to the rescue of countries being subjected to Communist pressure.

Even when we do decide that some struggling nation deserves our support, there are problems in providing that support today which did not exist just a few years ago. One of these stems from the revolution in international communications. Today any international action one may take is instantly communicated around the globe; instantly subjected to analysis; and instantly judged. And that public, international judgment--often approbation or criticism--influences events and inhibits major countries like ours or the Soviet Union, even though these countries voicing their approbation or criticism are often second or third level powers.

If we attempt to sway other countries diplomatically, we are not nearly as effective as we could be 20 or 25 years ago when most free nations of the world followed our lead in such fora as the United Nations. Today, one country has one vote and the major powers are generally on the minority side of those votes.

Today if we believed that it was in our national interest to intervene militarily somewhere, the memory of Vietnam reminds us that when the pendulum of offense and defense in military weaponry is tending towards the defense, as it now is, even a minor military power can give a major one a very difficult time.

What all this adds up to is that the leverage of influence in international affairs must be exercised much more subtly. We must be more concerned with long term influences rather than just putting a finger in the dike. We must be able to anticipate rather than react to events. We must be able to interpret the underlying forces which can be influenced and driven over time. For us in the intelligence world this means that we must vastly expand the scope of our requirements.

Thirty years ago our primary concern was to keep track of Soviet military activities. Today our geographical interests are much more widespread than just the Soviet Union. The subject matter in which we must be intimately familiar encompasses not just military technology, but politics, economics, food, population, narcotics, terrorism, the health and psychiatry of foreign leaders, energy reserves, and many other fields. There is hardly an academic discipline, there is hardly an area of the world that we must not be able to provide good information about to national leaders. This is an exciting, a demanding time for intelligence and one of fundamental change in the intelligence process of our country.

The second factor that is driving change is the technological revolution affecting how we collect intelligence. Basically there are three ways of acquiring foreign intelligence: by photographs from satellites or airplanes; by intercepting signals such as those that are passing through the air right here and now--signals from military equipment, signals from communications systems; and by human collection--the traditional spy.

The first two, photographic and signals intelligence, are called technical intelligence as opposed to human intelligence. The capabilities here, thanks to the great sophistication of American industry, are burgeoning. There is so much information flowing in that our real problem is how to process, handle, and do something with it. Interestingly though, rather than denegrating the value or need of the traditional spy, it has increased his importance. Broadly speaking, technical intelligence collection tells you what happened in some other country in the past. When I give that information to a policy maker the first thing that I am asked is, why did that happen and what is going to happen next? Uncovering people's intentions and plans is the unique forte of the human intelligence agent. The challenge that we face is being able to coordinate photographic, signals, and human means of collection, orchestrating them so that the three complement each other and so that we collect all needed information in the least expensive way with the least risks. For example, what the photograph can't tell you, you look for with signals or the human. This may sound very logical and very simple, but because technical capabilities are burgeoning and many are relatively new and in some ways overwhelming, we can no longer do business in the traditional way.

Because intelligence is a large bureaucracy spread over a number of different government agencies and departments, it has taken some fundamental restructuring to accommodate these changes. I have two jobs. I am head of the CIA but I am also the Director of Central Intelligence. In the latter role I coordinate all of the national intelligence activities of the country. Just over a year ago the President, in a new Executive Order, strengthened my authority over the budgets and collection tasking of all these intelligence activities. That change, that process, is still evolving today. It is coming along nicely but it is not yet complete.

The third factor driving change is the increased public attention to intelligence ever since the investigations of 1974 through 1976. Those investigations brought to American intelligence activities more public attention than has ever, in the history of mankind, been brought to bear on a major intelligence organization. That process, I am afraid, destroyed some of the confidence and support the American public has traditionally had for its intelligence activities. And, while I am beginning to sense a gradual return of that support and confidence, I also recognize a lingering suspicion as to whether intelligence organizations may be invading the privacy of the American citizen. In any event, enough of the allegations about previous abuses of intelligence were true, even though most were exaggerated, that corrective action has been necessary. It has been taken and has been taken thoroughly.

We now have a series of oversight procedures which serve as a very important check on intelligence. It begins with the President himself, who takes a direct and personal interest in what we are doing. It goes from there to an Intelligence Oversight Board which looks into the legality and propriety of intelligence activities, and reports directly to the President. And it goes from there to the two committees of the Congress empowered exclusively to conduct intelligence oversight. And finally, of course, the press is much more interested, much more persevering in learning what we are doing today than ever before.

The impact of all this added visibility has been substantial and has had a traumatic effect within the Intelligence Community. Some of this publicity is wanted. We need to regenerate that sense of confidence that we are not invading the rights of the American citizen. One way of doing that is through our being more open. We are publishing more and, incidentally, when you leave today, we will have on the tables in the foyer some examples of the materials that we have published in the last year or so which we think are of interest to the American public and which are unclassified. We are answering questions, we are speaking more in public as I am with you today, and we are participating more in symposia and academic conferences.

But some of the publicity is unwanted. It is unhelpful and it involves improper disclosures of intelligence information. This is demoralizing for a service that has traditionally, and of necessity, operated in secret. If you were a CIA case officer overseas attempting to persuade some foreign person to spy on our behalf at the risk of his or her life, then you must have confidence that you can assure that individual his identity will be protected. Today our people do not have the same sense of confidence that they did a decade ago. And so openness is a traumatic change for them which can have a negative impact.

Not the least of the traumas we are experiencing derives from the increasing legal context of everything we do. I am sure you appreciate that there is a natural tension between the effective and impartial administration of criminal justice and the successful prosecution of intelligence. I hardly need remind you that criminal justice requires

that all relevant information be made available to both the prosecution and the defense. And yet, you can readily appreciate that national intelligence interests often require that evidence derived from intelligence sources be protected against disclosure. The resulting dilemmas can be very painful and are not infrequent.

Are these real dilemmas? Yes. I think that when Attorney General Bell, last week, had to drop the prosecution of a case against two ITT officials in order not to disclose intelligence secrets, it is a genuine dilemma. There would be no dilemma, no problem, only if on the scale of national values every law enforcement interest were always superior to any intelligence interest. Intelligence information would always be brought forward as needed. Or if, on the other hand, law enforcement interests were always subordinated to intelligence interests, any criminal proceeding would be terminated should any intelligence information be threatened with disclosure.

Clearly neither view is correct. The values are variable and cannot be readily ordered in advance. Each case must be separately judged on its own facts, and intelligence interests must be placed in perspective with other interests such as justice and precedence, when deciding whether and on what basis to proceed with prosecution.

It is the Attorney General who has the discretion to decide whether a prosecution is warranted and on what basis to go forward. That is not to say, however, that I have no role in influencing that decision whenever intelligence interests are concerned. On the contrary, I have a necessary task.

In the first place, I am responsible for ensuring that no relevant information is withheld from the Attorney General. Access to relevant information, regardless of its classification, should not be a point of dispute. In my view, the Attorney General has a clear right and a need to review all such information so that his decisions may be taken with the fullest factual perspective.

Beyond this, I feel that I am responsible for giving the Attorney General an estimate of the potential impact of the public disclosure of intelligence information that may be relevant to a criminal prosecution. Again, I believe that this kind of an estimate is something the Attorney General must have to make informed decisions and to properly weigh the consequences of those decisions. If it should happen that I conclude that the Attorney General has come to the incorrect balance, I must then appeal to the President to decide whether the best interests of the United States favor prosecution or not. In brief, I cannot frustrate a prosecution simply by withholding secret information from release. That choice lies with the Attorney General and I must appeal that choice, if I do not agree with it. In the two years I have been privileged to work on these thorny issues with Attorney General Griffin Bell, we have never had, because of his great cooperativeness, anything but a harmonious resolution of these issues. But they are not easy for either one of us.

There are fundamental reasons why this issue presents such difficulty. One is simply the fact that a criminal trial in this country is a public event. I have no quarrel with the constitutional guarantees that make it so. At the same time I cannot ignore the fact that evidentiary uses of intelligence information involves a high probability that it will enter the public domain. There are few ways to avoid that outcome or to limit the exposure of the information to trial participants. Other constitutional provisions secure to an accused broad rights of cross-examination. Rules of procedure confer on the defense wide-ranging pre-trial discovery. These features make the judicial process almost as uncertain as it is open. For example, what lines of defense will be followed and what scope of discovery and cross-examination will be allowed do not lend themselves to precise advance measurement. They are unpredictable, and that means that the decision to prosecute is more difficult for those who must gauge, before the course is set, where it all might lead. Again, I'm not complaining about any of this or suggesting any radical reforms that would strip away rights of the accused. I am only trying to describe how it looks from my position.

What I have been saying takes on greater force when you consider the necessities of proof under some of the basic criminal statutes which are of special concern to intelligence agencies. Let us suppose, for example, that a government employee is arrested while attempting to deliver a highly classified document to a foreign agent, and the delivery is frustrated by the arrest. A crime has been committed under the espionage laws. Yet prosecution would exact an extraordinary price. The government would be required to show that the information in the document was of enough significance to materially injure the national security if it had fallen into the hands of the foreign government. That burden of proof would very likely require that the document itself be offered as evidence and that a government witness confirm its accuracy. The net result would be that the trial proceedings would have succeeded in doing exactly what the defendant was being tried for attempting but failing to do, that is, transmit and disclose the information. Moreover, the accuracy of that information would have been verified in the bargain. I am sure you will agree that a spectacle of this sort would not be pleasant to contemplate for those who had to struggle with a decision to prosecute. We have avoided this dilemma once recently, but it was indeed a very risky and uncertain matter.

Another well publicized problem in trial proceedings is the last minute discovery blitzes that have been favored by defense counsels in some espionage cases, the recent case of the U.S. vs Kampiles for example. It is unfortunately true that whenever the CIA or just intelligence is involved, it is inviting for a defense attorney to hope to collapse the prosecution by pressing for more disclosure than we are likely to be willing to provide. Hence, the shotgun approach which is evolving against which there are no easy countertactics.

Judges, though, are by no means insensitive to these dilemmas. They will from time to time regulate pretrial discovery in espionage prosecutions by protective orders affording the defendants and defense counsel access to sensitive materials but restricting their freedom to further disseminate such materials. Unfortunately, the terms of these orders have varied widely and seem to have nothing to do with the differences in the cases themselves.

For example, some of the orders have conditioned access to sensitive materials by defense witnesses on both security clearance grounds and court approval, whereas others, have only been on the basis of court approvals. In some cases, U.S. vs Moore for instance, the protective order has authorized defense counsel to maintain custody of materials in a safe furnished by the government, whereas in others, like the Kampiles case, the material remained totally in the custody of the government at all times. In a recent case, arrangements were made where the materials were kept in a safe of ours which in turn was kept in the judge's safe.

Let me not, however, leave any impression that all of the interests of intelligence are on the side of not disclosing or not prosecuting. We in the Intelligence Community have legitimate interests on both sides of this issue. On the other hand, our concern for protecting national secrets is genuine. Beyond concern for individuals such as I mentioned before, individuals who are willing to risk their lives in our nation's behalf, there is a wide-range of clear damage to our national interest when information which ought to stay secret is disclosed. Sometimes our relations or negotiations with other sovereign nations are undermined or our continued access to information jeopardized. Foreign intelligence services simply will not share information with an organization that appears to be an information seive; and expensive technical systems I have described can be frustrated and countered if their details are disclosed.

Thus, even though we in intelligence are indeed generally inclined, perhaps overly inclined, to hold back from prosecution to protect classified information, there are also many cases where we intensely want to see the prosecution proceed. Those that concern us most involve espionage. Beyond that, are the irresponsible, I would even say traitorous individuals who deliberately disclose classified information. The seriousness of these losses causes the Intelligence Community to strongly support the prosecution of the individuals who do the disclosing. My blood boils at the obvious callousness and selfishness of such persons. They not only deserve the punishment that may result from prosecution, but we need to prosecute these offenders to deter others. Thus, we have incentive to lean over backwards in releasing information which is essential to such judicial proceedings. In the two years I have been Director of Central Intelligence, I have held my breath while releasing data to permit the prosecution of nearly a half a dozen espionage cases. Nevertheless, the incentive to continue releasing information for the purposes of such prosecution remains strong.

Another set of dilemmas we face centers on the many rules and regulations which have recently been applied to intelligence agencies, especially those to protect the privacy of American citizens. Because they are new and often complex and because they must be interpreted in the light of our sometimes unique activities, they have impacted heavily on the speed and flexibility with which we have traditionally been able to operate. Very often, questions of Constitutional Law have been involved which have required both the Attorney General's legal staff and my legal staff to take the time to think through a legal issue in the midst of an operational crisis. In all such instances, the Attorney General and his staff have gone out of their way to provide timely opinions and advice. But, in practice, and as a result, our options have often been limited. An example in the electronic surveillance area will illustrate what I am talking about.

Over a year ago, a small country was under seige. At one point the only good source of information from within the country was the ham radio transmissions of an American missionary. In light of the President's Executive Order prohibiting electronic surveillance of a United States person, could we legally intercept that transmission? If we could, at what point would it become illegal electronic surveillance? The decision was made that as long as the missionary was using CB or ham radio bands -- we could listen. But that if he tried to disguise the broadcast--which is not unreasonable if you are broadcasting clandestinely and in fear of being caught--that would evidence a desire for privacy and we would have to stop monitoring.

While we recognize and applaud these efforts to ensure the constitutional and privacy rights of Americans, and in most instances we can adapt to them, the issues are complex and they must be assimilated by my people in the field who are not attorneys. The initiative of the intelligence operator can be dulled by this need to insure that all applicable legal standards are met, and the uncertainty as to whether they are being met can lead to overcaution. In fact, today, our operators are almost forced to avoid operations which could involve US persons. This in turn could reduce our flexibility to respond in crisis situations when the lives and property of American nationals may be involved.

This year it is my hope that legislation defining charters for the Intelligence Community will be passed by the Congress. This legislation would establish for the first time the authority for specific intelligence activities, as well as the boundaries within which we must operate. Written with care and sensitivity to problems like those I have just discussed, it may help to resolve some of these difficulties. Overreaction, either by tying the Intelligence Community's hands or by giving it unrestricted freedom would be a mistake. On the one hand inviting a repetition of past abuses, on the other emasculating necessary intelligence capabilities.

After all these comments, particularly about our legal problems, let me assure you that in my view the intelligence arm of our government today is strong and capable. It is undergoing substantial change which is never an easy or a placid process in a large bureaucracy. But, out of the present metamorphasis is emerging an intelligence community in which the legal rights of our citizens and the legal constraints and controls on intelligence operations are balanced with a continuing need to maintain an effective means of garnering information necessary for the conduct of foreign policy. This is not an easy transition. We are not there yet. But we are moving rapidly and surely down the right path. When we reach our goal we will have constructed a new model of intelligence, a uniquely American model, reflecting the ideals of our country. As we proceed, we need your support and understanding. I am therefore most grateful that you have asked me to be here today and have listened so attentively.

Thank you very much.